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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2012-0029]

Notice of Proposed Buy America Waiver

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed Buy America waiver and request for comment.

SUMMARY: The Federal Transit Administration (FTA) received a request for a waiver to permit the purchase of minivans that are non-compliant with FTA Buy America requirements using FTA funding. The request is from the North Front Range Metropolitan Planning Organization (NFRMPO). NFRMPO is in the process of procuring vehicles for its vanpool program, “VanGo.”

In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the waiver request and seeks public comment before deciding whether to grant the request. If granted, the waiver would be for the Buy America final assembly requirement only and would apply only to the FTA-funded procurement by NFRMPO.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA-2013-0027:

1. **Web site:** <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site.

2. Fax: (202) 493-2251.

3. Mail: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

4. Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the “Federal Transit Administration” and include docket number FTA-2013-0027. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT’s complete Privacy Act Statement in the Federal Register published April 11, 2000 (65 FR 19477), or you may visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mary J. Lee, FTA Attorney-Advisor, at (202) 366-0985 or mary.j.lee@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide notice and seek comment on whether the Federal Transit Administration (FTA) should a grant non-availability waiver for NFRMPO’s procurement of minivans or similar vehicles (minivans). If granted, the waiver would be limited to the Buy America final assembly requirement under 49 U.S.C. 5323(j)(2)(C)(ii) and 49 CFR 661.11.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 5323(j)(1). For rolling stock procured with FTA funds, this means that "the cost of components and subcomponents produced in the United States [must] be more than 60 percent of the cost of all components of the rolling stock; and . . . final assembly of the rolling stock has occurred in the United States." 49 U.S.C. 5323(j)(2)(C); 49 CFR 661.11(a). If, however, FTA determines that "the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality," then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

On June 21, 2010, in response to formal requests from ElDorado National-Kansas (ElDorado) and the Chrysler Group LLC (Chrysler), FTA waived its Buy America final assembly requirement for minivans and minivan chassis after determining through notice and comment that no manufacturer of minivans or minivan chassis performed final assembly in the United States. 75 FR 35123.

Subsequently, on August 3, 2012, FTA issued a notice in the Federal Register seeking comments on a request by the Vehicle Production Group (VPG) for FTA to rescind the Buy America waiver for minivans and minivan chassis. 75 FR 35124. According to VPG, it was able to manufacture a wheelchair accessible vehicle, the Mobility Vehicle 1 (MV-1), substantially similar to a minivan and in a sufficient quantity that was, and still is, Buy America compliant with respect to both domestic content and final assembly.

On December 3, 2012, FTA rescinded the waiver for minivans and minivan chassis after determining that a blanket waiver was no longer necessary. 77 FR 71676. In this notice, FTA

carefully considered all of the comments received by the various stakeholders through the United States in order to address concerns, including the differences between the MV-1's accessibility features and traditional minivans, inadequate seating capacity when the vehicles are used for vanpool services, as well as others. FTA determined, however, that these concerns could be addressed with individual waiver requests on a case-by-case basis as the need arose and a blanket waiver was no longer necessary.

On July 1, 2013, FTA made two separate determinations that Braun Corporation (Braun) and ElDorado National-Kansas' (ElDorado) manufacturing processes on incomplete Chrysler and Dodge minivans met FTA's Buy America requirements for final assembly.¹ These determinations on final assembly activities were made in response to formal requests by Braun and ElDorado pursuant to section (c) of Appendix D to 661.11 (of 49 CFR).

Now, FTA has received a request for a Buy America waiver for minivans from the North Front Range Metropolitan Planning Organization (NFRMPO). NFRMPO operates a vanpool ("VanGo") program, which has 75 vans with routes connecting, among others, Fort Collins, Loveland, Greeley, Denver, and Boulder, Colorado. The VanGo program carries more than 420 commuters daily in the northern Colorado area at 93 percent occupancy. All of the vanpools in the VanGo program carry five to eight passengers. According to NFRMPO, this makes the large 10-15 passenger vans inefficient and too costly. In a recently issued request for proposals for minivans, NFRMPO received no qualified proposals for vehicles that meet Buy America requirements for rolling stock and seat at least seven passengers. Therefore, NFRMPO requests that FTA grant a Buy America waiver for its procurement of minivans based upon non-availability.

¹ http://www.fta.dot.gov/legislation_law/about_FTA_598.html;
http://www.fta.dot.gov/documents/Imanse_re_Chrysler_Buy_America.pdf.

The purpose of this notice is to publish NFRMPO request and seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the effects of a potential waiver and the merits of the request. A full copy of the request has been placed in docket number FTA-2013-0027.

Issued on July 31, 2013.

Dorval R. Carter, Jr.

Chief Counsel

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